

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Structure and Practices)
of the Video Relay Service)
Program)
)
Comments and Petition for)
Clarification and Rulemaking)
_____)

CG Docket No. 10-51

COMMENTS OF CSDVRS, LLC
AND PETITION FOR CLARIFICATION AND RULEMAKING

CSDVRS, LLC (“CSDVRS”), hereby offers further comments on the Notice of Inquiry (“NOI”) issued by the Federal Communications Commission (“FCC” or “Commission”) in June, 2010¹ concerning the future of the video relay service (“VRS”) industry. Further, CSDVRS seeks clarification on standing Commission rules, and pursuant to FCC Rule Section 1.401 *et seq.*, urges the Commission to amend the 47 C.F.R. §64.604, or add a new subsection to Title 47, Part 64, to address issues raised in this petition.

Comments

CSDVRS herein offers further commentary on the NOI as raised in previous submissions before the Commission and filed to the record.²

¹See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Notice of Inquiry, CG Docket 10-51, FCC 10-111, (June 28, 2010)(hereinafter “NOI”).

²See, e.g., *See, In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS, LLC, CG Docket 10-51, (August 18, 2010).

CSDVRS first would reiterate its support for the continuation of tiered rates in the VRS industry. As noted in prior filings, the tiered rates have fostered competition and innovation in the industry, and this has lead to more consumer choice and greater functional equivalency as required under the Communications Act.³ The tiered rate has also allowed smaller VRS companies to be conceived and survive in a market dominated by one provider. By way of example, the competition in the VRS industry has forced the dominant provider to improve its wait times from over two minutes to twenty seconds, and to broaden its product offering to include VRS access via personal computers and mobile smart phones.

CSDVRS has discussed with Commission members a model and a sophisticated analysis of the economies of scale in the VRS Industry.⁴ The model discussed demonstrated the allocation of fixed and variable costs as volume increases. Based on the economies of scale model, the benefits of tiers to the industry, and the continued vertical integration of the industry, CSDVRS submits that the Commission should maintain the tiered rate structure and proposes the adoption of the following tiers and reimbursement rates: Based on analysis the key economy of scale points are 500,000, 2 million and greater then 2 million minutes per month. Based on this the CSDVRS is recommending the following tiered rate.

RATE SCHEDULE FOR CONVERSATION MINUTES ON A MONTHLY BASIS

³ 47 U.S.C. §225

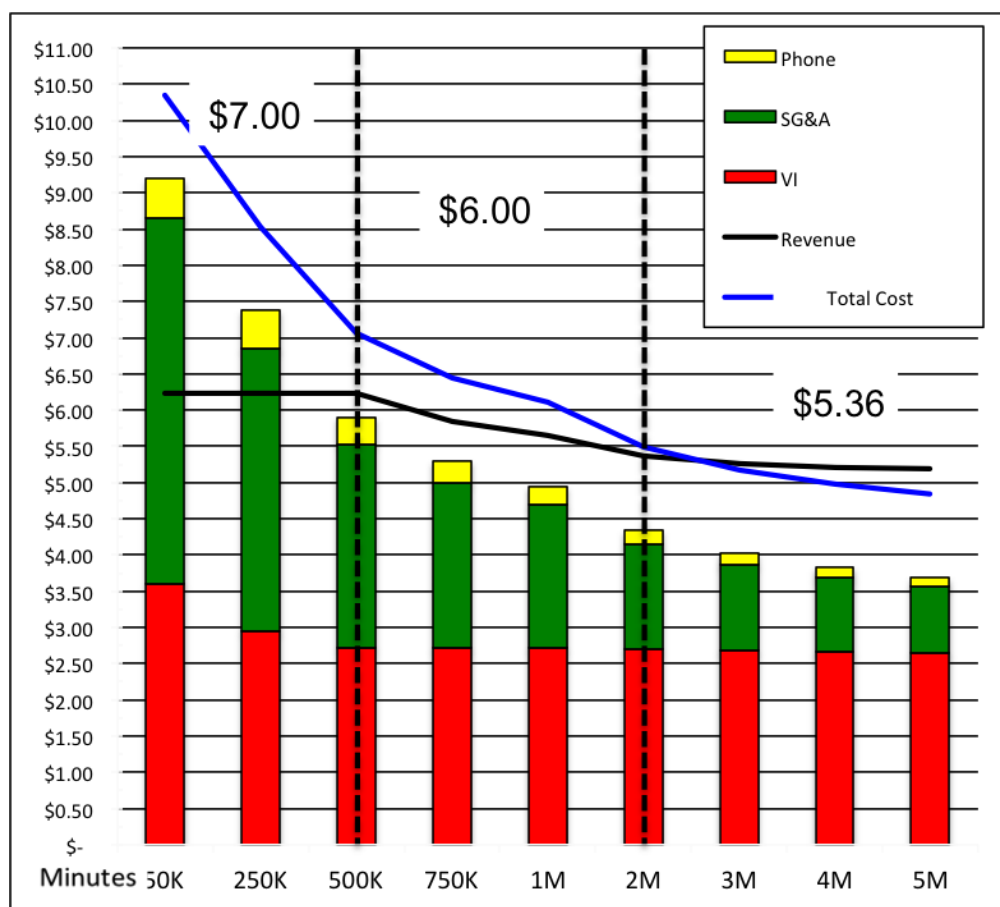
⁴See, e.g., CSDVRS Notice of Ex Parte (January 11, 2011).

Minutes	0 to 500,000	500,001 to 2,000,000	over 2,000,000
Rate(\$)	<u>7.00</u>	6.00	5.36

These rates are based on the cost at the tiers plus 11.25 after tax return on investment proscribed in the 2003 order and commented on by CSDVRS following the last rate setting.⁵ This is similar to a model for regional local exchange carriers.

⁵See, *In the Matter of Structure and Practices of the Video Relay Service Program*, Comments of CSDVRS, CG Docket 10-51, (May 10, 2010).

Rate per Minute at Various Volumes



Petition for Rulemaking

1. De-Featuring of Videophones

CSDVRS first submits that the Commission should open a rulemaking proceeding to determine the extent to which videophones can be de-featured after a consumer ports his/her ten-digit telephone number to a different default provider.

In the 2008 numbering orders, the FCC created a default period designed to give consumers a choice of VRS provider.⁶ The orders allowed consumers to select a default provider of their choosing and receive a ten-digit number from that provider in the process. In addition, consumers were allowed to port their ten-digit telephone numbers between default providers as is permitted in hearing telephony.⁷

At the time of the Numbering Orders, 95% or more of all VRS minutes came from a phone provided by the dominant provider. The porting allowance contained in the orders thus came as a grave and immediate threat to its market dominance. In response, the dominant provider de-featured its videophone product rendering it useless when the consumer ported their 10 number to a different provider. Despite numerous consumer complaints, as well as complaints from smaller providers, this issue has still not been resolved. Indeed, the acceptance, or at least lack of clarification on de-features, not only caused considerable consumer confusion, but also ultimately served to undermine the intention of the default provider selection process and of the full benefit of porting.

⁶See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CG Docket 03-123, FCC 08-151, (June 24, 2008); *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Second Report and Order and Order on Reconsideration, CG Docket 03-123, FCC 08-275, (December 19, 2008)(collectively “Numbering Orders”).

⁷*Id*

In light of the foregoing, CSDVRS petitions the FCC to institute a rulemaking proceeding concerning continued videophone functionality after a consumer ports their 10 digit number. Specifically, CSDVRS submits that an original provider should not be allowed to de-feature the videophone product in anyway when a consumer ports his/her number to a different provider, and wishes to retain and utilize the same videophone product. As noted in prior commentary,⁸ CSDVRS does believe that the original provider of the equipment should be compensated nominally in order for them to provide maintenance support for the equipment, support E911 capability, the redirecting of VRS calls to the new provider, and support of “cloud” based features. In no case will the de-featuring of videophones from current or future “cloud “ based or firmware based features of the videophone be permitted. This is in effect an “unbundled” model similar to local and long distance in the hearing market. The company providing initial connection and call routing would receive a certain portion of the conversation rate while the company that provides the interpreting service would receive the majority of the rate. CSDVRS would propose that the split be 90 % interpreting company and 10% to the original call routing company.

2. Commitment Periods

VRS consumers are subject to multiple outreach efforts undertaken by providers, consumer groups, and even friends and family asking them to use various providers. This oftentimes results in confusion and often borders on harassment.

⁸See, *In the Matter of Structure and Practices of the Video Relay Service Program*, CSDVRS Petition for Rulemaking on CPE Support and Portability, CG Docket 10-51, (August 9, 2010)(“CPE Petition”).

In light of the foregoing, CSDVRS again urges the Commission to institute a rulemaking proceeding concerning commitment periods following default provider selection.⁹ CSDVRS submits that a consumer should be subject to a one (1) year commitment period when receiving a new phone and number from a default provider, or when porting from an existing provider to a new default provider. Instituting this rule will prevent excessive outreach and distribution of misinformation, and ultimately inure to the benefit of the Interstate TRS Fund (“Fund”). It must be noted that it is vital that the Commission preserve dial-around in the implementation of this rule in order to maintain consumer choice during the commitment period. In addition, when a consumer chooses to dial-around, they must not be penalized with any loss of features (i.e. address book functionality, call history, and automatic dialed number submission) on the videophone provided by the initial provider. The new rule should also account for an early termination whereby if a consumer wants to port during the commitment period, a one-time early cancellation fee of \$100, paid to the initial provider, would apply. Such fees are common in hearing telephony and could easily be applied to the VRS industry. For purposes of VRS industry, it is essential that the new rule explicitly state that VRS providers are prohibited from paying the early termination fee on behalf of the consumer either in cash or through a different tangible or intangible benefit.

3. Consumer Address Books

A recurring problem in equipment porting is the de-featuring of videophones as referenced herein. Central to such de-featuring is the loss of the consumer’s address book which

⁹ This issue was originally raised in the CPE Petition, *Id.*

is invariably connected to the provider's videophone (particularly with the dominant provider). The removal of this considerable consumer asset – oftentimes contact lists number in the hundreds – is enough disincentive to a consumer that is considering changing default providers, that consumer choice is completely abrogated in direct contradiction to the functional equivalency mandate. In light of this, CSDVR urges the Commission to open a rulemaking proceeding concerning the proprietary interests of a consumer's address book. CSDVRS submits that the Commission should institute a rule clarifying that the address book is the property of the consumer, and not the provider, and, as such, each VRS provider must offer a simple means for exporting address books into machine readable form using the vCard 3.0 standard as defined in the ITU RFC 2425, RFC 2426. This methodology is readily available to all providers.

4. Prohibited Transactions

Conflicts of interest can undermine any industry, and these can take many forms, including implied conflicts generated through monetary or thinly guised philanthropic undertakings. The VRS industry has historically been fraught with such issues. Various non-profit organizations, educational institutions and other charities have been given monies and other donations from VRS providers with either direct or implied requirements to use that provider's videophone and by inference the provider's VRS service. In addition, the continuation of these 'donations' is contingent on the entity's continued exclusive use of the provider's videophone and by inference the provider's VRS service. Such activity undermines consumer choice, functional equivalency, and traditional notions of ethics and fair play. Accordingly, CSDVRS would urge the Commission to institute a rulemaking proceeding to hold the VRS

providers to higher standards in their dealings and transactions with outside entities whether consumers or otherwise. To that end, CSDVRS submits that Commission should enact new rules to prohibit VRS providers from bestowing gifts or donations of any form to any individual or institutional entity when they are tied in any manner exclusivity to a provider's products or to VRS service. The Commission must prohibit contracts providing for exclusive use of a provider, or otherwise limiting the use of another VRS provider and its products, between a VRS provider and its products and any non-profit organization, educational institution, business, or charity. Sponsorships of events or meetings must be limited to actual direct costs of participation and must be open to all VRS providers to participate. Enacting this rule will ultimately save the Fund considerable amounts of capital and protect consumer choice while promoting healthy competition and increased functional equivalency.

5. Commercially Available Videophone Equipment

The exclusive market and "cottage industry" that surrounds videophone equipment in the VRS industry has cost the Fund untold millions of dollars in past years. As a means of curbing costs, as well as promoting greater competition amongst providers for services, rather than equipment, CSDVRS proposes the Commission instigate a rulemaking process concerning the commercial availability of videophone equipment. CSDVRS proposes that the Commission should issue an order providing that within one (1) year, all Customer Premises Equipment provided or sold by a VRS provider must be commercially available (i.e. "off the shelf") to all certified providers. To protect interoperability, following the one year period, no VRS provider can be permitted to enter into or have a contract that impedes another VRS provider from

utilizing, configuring or programming a particular manufacturer's videophone or any features of the videophone.

6. Numbering

The use of proxy and 800 numbers has been a bane to the VRS industry since its inception. Indeed, the dominant provider has used proxy numbers and 800 numbers to create closed networks for point-to-point communications that do not interoperate or communicate with other provider videophones. In light of this, and to settle the matter permanently, CSDVRS would urge the Commission to institute a rulemaking to state that the only numbers allowed to reside in, or be associated with, videophones for VRS or point-to-point usage shall be ten-digit toll numbers from the North American Numbering Plan (NANP). All 10 digit toll numbers that reside in, or associated with, videophones must be registered into the iTRS database, and any number that is not so registered in the database must be completely deleted from any CPE and/or VRS provider's network and cannot be used for routing, directing calls or implementation of videophone features. Enacting this measure will ensure seamless interoperability and truly functional equivalent access.

7. Platform Use

CSDVRS has offered comments on automated minute tracking and call detail records in prior petitions as a means to eliminate fraud within the VRS industry.¹⁰ Taking that one step further, CSDVRS believes that requiring FCC certification with respect to providing call detail

¹⁰See, *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CSDVRS Petition for Rulemaking, CG Docket 03-123 (May 22, 2009).

records to the Fund Administrator will further weed out any potential fraudulent activity within the industry. Accordingly, CSDVRS petitions the Commission to initiate a rulemaking proceeding to require that all platforms that provide call detail records for submission to the Fund Administrator must be completely automated and owned and operated by a certified VRS provider. Further, the process for the creation of a call detail record by the automated platform must be auditable by third party entities selected by the FCC and refusal to submit to an audit must be punishable by foregoing the reimbursement for minutes submitted and withholding of payment.

8. Certification

In wake of the fraud uncovered in the VRS industry in the past two years, there appears to have been a significant chill on the certification process for new VRS providers. While CSDVRS can certainly appreciate the need to eliminate fraud and waste within VRS, there also exists a very real issue with dilatory adjudication of certification applications. Indeed, there are applications for certification that have been pending before the Commission in excess of two years, with little indication as when certification might be awarded or denied. In light of this, CSDVRS would urge the Commission to open a rulemaking process to adopt a minimum standard for the adjudicatory process for certification applications. CSDVRS would recommend that all applications for certification be adjudicated within a six-month period. This will provide certainty to investors, employees, and other interested parties with respect to the future of a company's operations. CSDVRS would also suggest that this standard be applied across the board to all forms of TRS and not be limited solely to video relay.

Petition for Clarification

In light of recent matters concerning outreach costs that providers have incurred in the wake of the Numbering Orders, CSDVRS urges the Commission to clarify the differentiations, or non-differentiations, between “outreach”, “sales”, and “marketing.” This will be of particular importance as the industry moves into a new rate proceeding and reimbursement schedule in the coming years. CSDVRS has found that considerable confusion exists in the VRS industry as to the definition and/or interrelation between outreach and other consumer-contact undertakings, which may or may not be mandated by Commission rules.

CSDVRS believes that outreach in the VRS industry is essentially the acquisition of customers to use VRS. Accordingly, CSDVRS submits the term is synonymous with the terms “sales” and “marketing” as they would be defined in any other industry. All three involve direct consumer contact, and all three may result in consumer acquisition, no matter how they are presented. CSDVRS would therefore urge the Commission to recognize this and not differentiate between sales, marketing, or outreach.

Respectfully Submitted,

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